

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNION CONNECTOR CO., INC.,	:	:
	:	
Plaintiff,	:	<b>ORDER OF DISMISSAL</b>
	:	
- against -	:	10-CV-2558-ENV-JO
	:	
ESL POWER SYSTEMS, INC.	:	
	:	
Defendant.	:	
-----X	:	

VITALIANO, D.J.

On February 4, 2011, Magistrate Judge Orenstein issued a Report and Recommendation that plaintiff's complaint be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). Neither plaintiff nor defendant objected to the Report and Recommendation within the time prescribed by 28 U.S.C. § 636(b)(1).

In reviewing a magistrate judge's Report and Recommendation, this Court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." *Id.* "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Cheema v. Trans Union L.L.C.*, No. 1:09-cv-00140, 2010 WL 2540309, at \*1 (E.D.N.Y. June 17, 2010) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

The Court finds the Report and Recommendation to be correct, well-reasoned, and free of any clear error. As Magistrate Judge Orenstein stated, "[i]f a defendant is not served within 120 days after the complaint is filed, the court-- on motion or on its own after notice to the plaintiff--must

dismiss the action without prejudice against that defendant or order that service be made within a specified time.” *See* Fed. R. Civ. P. 4(m). Plaintiff having filed the complaint on June 6, 2010, the deadline to effect service on defendant has long since passed. If plaintiff had shown good cause for its failure to effect timely service, the Court would be required to “extend the time for service for an appropriate period.” *Id.* Plaintiff has not done so, however, notwithstanding the fact that on October 7, 2010, Magistrate Judge Orenstein entered an order directing plaintiff either to file proof of timely service or file a motion requesting an extension of the time to effect service for good cause. The order also advised plaintiff that failure to comply by October 14, 2010 would result in a recommendation that the case be dismissed.

The Court accordingly adopts the Report and Recommendation in its entirety. It is hereby ordered that the case be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. It is further ordered that the Clerk of the Court mail a copy of this order to all parties and mark the case closed.

SO ORDERED

DATED: Brooklyn, New York  
March 19, 2010

s/ENV

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ERIC N. VITALIANO  
U.S.D.J.